

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN FISHER, *et al.*,

Plaintiffs,

v.

Case No. 23-cv-10426
Hon. Matthew F. Leitman

FCA US LLC,

Defendant.

/

**ORDER TERMINATING DEFENDANT'S MOTION TO DISMISS
PLAINTIFFS' CLASS ACTION COMPLAINT (ECF No. 13) WITHOUT
PREJUDICE AS MOOT**

On February 17, 2023, Plaintiffs Brian Fisher, Eric Lee, Jerry Vanderberg, and Rachel Walkowicz filed this putative class action against Defendant FCA US, LLC (“FCA”). (*See* Compl., ECF No. 1.) Plaintiffs allege, among other things, that the “eTorque” motor systems in their FCA vehicles, which are intended to improve the Class Vehicles’ fuel efficiency, suffer from a dangerous defect that causes the vehicles’ engines to turn off, their transmissions to shift to “Park”, and/or their emergency brakes to engage unexpectedly. (*See id.*, PageID.19) On April 21, 2023, FCA filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See* Mot. to Dismiss, ECF No. 13.)

On April 24, 2023, without expressing any view on the merits of the motion to dismiss, the Court entered an order granting Plaintiffs leave to file a First Amended Complaint in order to remedy the alleged deficiencies in their claims identified by FCA in its motion to dismiss. (*See Order*, ECF No. 17.) The Court informed the parties that if Plaintiffs decided to file a First Amended Complaint, it would terminate FCA's motion to dismiss without prejudice. (*See id.*)

On May 2, 2023, Plaintiffs filed a notice with the Court that they intend to file a First Amended Complaint. (*See Notice*, ECF No. 18.) Accordingly, because Plaintiffs will be filing a First Amended Complaint, the Court **TERMINATES** FCA's motion to dismiss (ECF No. 13) **WITHOUT PREJUDICE AS MOOT**. FCA may re-file a motion to dismiss directed at the First Amended Complaint if it believes that such a motion is appropriate after reviewing that pleading.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: May 3, 2023

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 3, 2023, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

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